

**FROM THE COMMITTEE ON
MODEL CIVIL JURY INSTRUCTIONS**

The Committee solicits comment on the following proposals by June 30, 2012. Comments may be sent in writing to Timothy J. Raubinger, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

PROPOSED

The Committee is considering the adoption of new instructions for use in cases involving alleged violations of the Michigan Consumer Protection Act, MCL 445.901 et seq.

**[NEW] M CIV JI CHAPTER 113
CONSUMER PROTECTION ACT**

**[NEW] M CIV JI 113.01
TRADE OR COMMERCE; PROHIBITED PRACTICES—EXPLANATION**

We have a state law known as the Consumer Protection Act, which provides that certain unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful.

Note on Use

MCL 445.904 provides that the Act does not apply to certain regulated transactions or conduct and methods, acts, or practices already made unlawful by certain other statutes.

Comment

MCL 445.903.

**[NEW] M CIV JI 113.02
UNFAIR, UNCONSCIONABLE, OR DECEPTIVE METHODS, ACTS, OR
PRACTICES**

The methods, acts, or practices which are protected by the Consumer protection Act include:

(a) _____.

(b) _____.

(c) _____.

Note on Use

The applicable provisions of MCL 445.903 should be inserted and read as indicated by the proofs.

Comment

MCL 445.903

[NEW] M CIV JI 113.03

TRADE OR COMMERCE—DEFINITION

When I use the term “trade or commerce” I mean the conduct of a business providing goods, property, or service primarily for personal, family, or household purposes. [“Trade or commerce” includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity.] [“Trade or commerce” does not include the purchase or sale of a franchise, but does include pyramid and chain promotions.]

Note on Use

Use only if there is an issue concerning whether defendant was acting in trade or commerce. Use the bracketed language only if appropriate. If a franchise, pyramid or chain promotion is involved, additional instructions defining those terms may be necessary. Those instructions should be based on the definitions found in the Franchise Investment Law, MCL 445.1501 et seq.

Comment

MCL 445.902(g)

[NEW] M CIV JI 113.04

LOSS—DEFINITION

When I use the term “loss,” I mean either a monetary damage or the prevention of the fulfillment of plaintiff’s reasonable expectations.

Comment

MCL 445.911(2); *Mayhill v AH Pond*, 129 Mich App 178 (1983).

[NEW] M CIV JI 113.05

MATERIAL—DEFINITION

When I use the term “material,” or “material fact” I mean a fact that is important to the transaction, or one which the defendant knew or should have known would influence the plaintiff in entering into the transaction.

Comment

See *Papin v Demski*, 17 Mich App 151 (1969).

[NEW] M CIV JI 113.07
BONA FIDE ERROR—DEFINITION

Defendant claims that, if there was a violation of the Consumer Protection Act, it was a bona fide error, which will limit the amount of recovery. If you find a violation of the Act to have occurred, you will decide if this defense has been established.

To establish this defense, the defendant has to prove the following:

- 1) that the violation occurred because of a good faith error on the part of the defendant; and
- 2) that defendant maintained procedures reasonably adapted to avoid this error.

If you find that defendant has proved both of these elements, you must find that the violation was a bona fide error. If either of these elements is not proved, the violation is not a bona fide error.

Note on Use

This instruction should be given if bona fide error is pled.

Comment

The bona fide error defense, limiting recovery to actual damages, is set forth at MCL 445.911(6). See *Head v Phillips Camper Sales & Rental, Inc.*, 234 Mich App 94 (1999) and *Temborius v Slatkin*, 157 Mich App 587 (1986).

[NEW] M CIV JI 113.09
UNFAIR, UNCONSCIONABLE, OR DECEPTIVE METHODS, ACTS, OR PRACTICES —BURDEN OF PROOF

Plaintiff has the burden of proving that:

1. Defendant engaged in trade or commerce.

2. Defendant committed one or more of the prohibited methods, acts, or practices alleged by plaintiff; and
3. Plaintiff suffered a loss as a result of defendant's violation of the act.

Your verdict will be for the plaintiff if the plaintiff has proved all of those elements. Your verdict will be for the defendant if the plaintiff has failed to prove any one of those elements.

The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

Chair: Hon. Alfred M. Butzbaugh
Reporter: Timothy J. Raubinger
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